SUMMARY
August 8, 2024

2024COA84

No. 21CA1256, *People v. Cuevas* — Crimes — Murder in the First Degree; Constitutional Law — Sixth Amendment — Right to Decide the Objective of the Defense

A division of the court of appeals holds that defense counsel's unilateral decision to concede guilt on three lesser charges after defendant pleaded not guilty to the charges did not violate defendant's Sixth Amendment right to autonomy in deciding the objectives of his defense under *McCoy v. Louisiana*, 584 U.S. 414 (2018). The division concludes that defendant's not guilty plea is not tantamount to an express assertion of innocence.

Because the division rejects defendant's remaining contentions on appeal — that the prosecution presented insufficient evidence to prove that he committed first degree murder, and that the court erred by denying defense-tendered jury instructions and defense

counsel's request to recross-examine an expert witness — defendant's conviction for first degree murder, vehicular eluding, and identity theft is affirmed.

COLORADO COURT OF APPEALS **2024COA84**

Court of Appeals No. 21CA1256
Pueblo County District Court No. 19CR2075
Honorable Allison Patricia P. Ernst, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Anthony Christopher Cuevas,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE TAUBMAN*
Welling and Schock, JJ., concur

Announced August 8, 2024

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 Defendant, Anthony Christopher Cuevas, appeals the judgment of conviction entered on jury verdicts finding him guilty of first degree murder, vehicular eluding, and identity theft. Because we hold that a criminal defendant's not guilty plea alone is not tantamount to an express assertion of innocence under *McCoy v. Louisiana*, 584 U.S. 414 (2018), and reject Cuevas' other contentions, we affirm.

I. Background

¶ 2 The police found M.L.'s body — without her head, feet, or hands — in a suitcase in a dumpster by a car wash. The suitcase also contained a miter saw, a knife blade with a missing handle, and bloody blankets. Surveillance video footage from a camera at the car wash showed a man with the same build as Cuevas, who is M.L.'s son, driving M.L.'s blue car and putting the suitcase in the dumpster.

¶ 3 Several hours after the suitcase was put in the dumpster, Cuevas sold M.L.'s blue car to a scrapyard for seventy dollars. He asked to have the car crushed as soon as possible. He and his wife then drove off in M.L.'s sports utility vehicle (SUV), which Cuevas' wife had apparently driven to the scrapyard.

¶ 4 When several detectives radioed that they had seen Cuevas drive by M.L.'s house in her SUV, a police officer tried to pull him over. A high-speed chase ensued. When Cuevas drove onto a dirt road, the officer lost sight of him and ended the chase.

¶ 5 Later that day, the police found M.L.'s SUV abandoned near the Pueblo Reservoir. The following day, the police responded to a report that a checkbook and duffel bag had been stolen from a truck parked near the reservoir. Several hours later, Cuevas cashed a check taken from the truck. The police found the duffel bag in a motel room paid for in cash and registered under Cuevas' wife's name. When the police saw Cuevas and his wife walking near the motel, they arrested them.

¶ 6 The police later discovered that M.L. had been stabbed to death in the basement of her house, her body parts had been removed after she died, and the scene had since been cleaned and painted. Upon entering M.L.'s basement, the police found, among other things, a knife handle that matched the blade contained in the suitcase; a broken T-ball bat barrel and blood-smeared handle; a kitchen knife and disposable rubber gloves, both of which were covered in blood; various cleaning supplies; and semi-wet paint that had been used to conceal blood stains and blood spatter on the walls.

¶ 7 During his interview with the police, Cuevas confessed that he had stabbed M.L. with a knife. When M.L. had then laughed at him, he "continued to stab her." Cuevas also told the police that he did not know what happened to M.L.'s body because he had blacked out after stabbing her and woke up while driving M.L.'s blue car; he sold the blue car to a scrapyard for seventy dollars; after he and his wife left the scrapyard, they "ran" from the police while driving M.L.'s SUV; and they ran away on foot after abandoning the SUV near the reservoir.

¶ 8 Several months after Cuevas' arrest, the police found M.L.'s head, hands, and feet in a trash bag on the Arkansas River Trail.

¶ 9 The People charged Cuevas with first degree murder, vehicular eluding, first degree criminal trespass, and identity theft. Cuevas pleaded not guilty to each charge. After a lengthy trial, a jury convicted him of all but the first degree criminal trespass charge. The district court sentenced Cuevas to life without the possibility of parole in the custody of the Department of Corrections.

¶ 10 On appeal, Cuevas raises five contentions: (1) the prosecution presented insufficient evidence to prove that he committed first degree murder; (2) defense counsel conceded guilt, thereby violating his Sixth Amendment right to maintain his innocence; (3) the court erred by denying defense-tendered jury instructions; (4) the court erred by denying defense counsel's request to recross-examine an expert witness; and (5) the cumulative effect of these alleged errors warrants reversal. We reject each of his contentions.

II. Sufficiency of the Evidence

¶ 11 Cuevas contends that the prosecution presented insufficient evidence to prove that he committed first degree murder. We disagree.

A. Standard of Review

¶ 12 We review sufficiency of the evidence claims de novo. *Gorostieta v. People*, 2022 CO 41, ¶ 16, 516 P.3d 902, 905. In determining whether the prosecution presented sufficient evidence to sustain a conviction, "we ask whether the evidence, 'viewed as a whole and in the light most favorable to the prosecution, is substantial and sufficient to support a conclusion by a reasonable mind that the defendant is guilty of the charge beyond a reasonable doubt.'" *Id.* (quoting *People v. Harrison*, 2020 CO 57, ¶ 32, 465 P.3d 16, 23); *see also People v. Duran*, 272 P.3d 1084, 1090 (Colo. App. 2011) ("In making this determination, we must give the prosecution the benefit of every reasonable inference arising from the evidence.").

B. Analysis

¶ 13 To convict Cuevas of first degree murder (after deliberation), the prosecution needed to prove that he, "[a]fter deliberation and with the intent to cause the death of a person other than himself, . . . cause[d] the death of that person or of another person." § 18-3-102(1)(a), C.R.S. 2023. "The term 'after deliberation' means not only intentionally but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act." § 18-3-101(3), C.R.S. 2023.

¶ 14 Cuevas' sufficiency of the evidence challenge pertains only to the identity and deliberation elements of first degree murder. Specifically, he contends that the prosecution presented insufficient evidence to establish that he, not someone else, killed M.L., and that he did so after deliberation.

¶ 15 Our review of the record shows that substantial evidence supported the identity and deliberation elements of Cuevas' first degree murder conviction. With respect to identity, the prosecution presented the following evidence: Cuevas confessed that he had stabbed M.L. twice in the stomach using a knife; the knife handle found in M.L.'s basement matched the knife blade found in the suitcase containing M.L.'s body; M.L.'s neighbor saw a man who resembled Cuevas at M.L.'s house the same day M.L. died; and this same neighbor, after watching the car wash video footage, identified the man driving M.L.'s car and putting the suitcase in the dumpster as the man he had seen at M.L.'s house. The prosecution also introduced expert testimony from a forensic DNA analyst who explained that there was moderate to very strong support for the conclusion that the rubber gloves and broken T-ball bat handle and barrel contained Cuevas' DNA, and that there was limited support for the conclusion that the broken knife handle, miter saw, and trash bag containing M.L.'s head, hands, and feet contained Cuevas' DNA.

¶ 16 With respect to deliberation, the jury reasonably could have inferred that Cuevas exercised reflection and judgment based on the circumstances surrounding M.L.'s death. *See People v. Dist. Ct.*, 926 P.2d 567, 571 (Colo. 1996) ("The circumstances surrounding a victim's death may permit the reasonable inference that the defendant had adequate time for the exercise of reflection and judgment concerning the fatal act."). The prosecution presented evidence that M.L. died from blood loss caused by numerous stab wounds in her chest and neck; Cuevas confessed that, after he had stabbed M.L. with a knife, she laughed at him, so he "continued to stab her"; the police found rubber gloves covered in blood in M.L.'s basement, where she had been stabbed; M.L.'s body, concealed in a suitcase, was put in a dumpster; after M.L. died, Cuevas sold her car — a "brand new" sedan in good working condition — to a scrapyard for seventy dollars and asked to have it crushed as soon as possible; M.L.'s head, hands, and feet had been removed and either refrigerated or frozen after she died; Cuevas told the police that one month before M.L. died, a witch doctor caused him to believe that M.L. had repeatedly sexually abused him when he was a child; Cuevas told the police that M.L. was "awful" and did not deserve a proper burial because she was a "witch" who "practice[d] bad magic" and "sold herself to the devil"; and the day before M.L.

died, M.L.'s neighbor saw Cuevas yelling at M.L. in a "very loud," "threatening" manner and thought M.L. looked like she was scared of Cuevas. *See People v. Sanchez*, 253 P.3d 1260, 1262 (Colo. App. 2010) ("The use of a deadly weapon, the manner in which it was used, and the existence of hostility or jealousy between the accused and the victim" can prove deliberation. (quoting *People v. Dist. Ct.*, 779 P.2d 385, 388 (Colo. 1989))); *People v. Medina*, 51 P.3d 1006, 1013-14 (Colo. App. 2001) (evidence that the "defendant engaged in an elaborate cover-up of the victim's body" was relevant in evaluating whether sufficient evidence supported the defendant's murder conviction), *aff'd sub nom. Mata-Medina v. People*, 71 P.3d 973 (Colo. 2003).

¶ 17 Because the evidence presented by the prosecution could "support a fair-minded jury's finding 'that the guilt of the accused has been established beyond a reasonable doubt,'" *People v. Perez*, 2016 CO 12, ¶ 24, 367 P.3d 695, 701 (quoting *People v. Gonzales*, 666 P.2d 123, 127-28 (Colo. 1983)), we decline to disturb the jury's verdict finding Cuevas guilty of first degree murder.

III. Sixth Amendment

¶ 18 Cuevas asserts that his defense counsel violated his Sixth Amendment right to maintain innocence by conceding guilt on the lesser charges of vehicular eluding, first degree criminal trespass, and identity theft. We disagree.

A. Additional Background

¶ 19 In his opening statement, defense counsel told the jury,

> You don't need to spend a lot of mental energy focusing on whether [Cuevas] put the suitcase in the dumpster. He did. You don't have to waste mental energy wondering, did he and [his wife] break into the red truck and steal some stuff and cash a check? He did. You don't have to wonder, did he and [his wife] take off in the [SUV]? He did.

¶ 20 During closing argument, the prosecutor told the jury that he would address only the first degree murder charge because the defense "conceded the other three charges." Defense counsel responded to the prosecutor's remark as follows:

> When I got up here, and the part of the trial we call opening statements, I told you the things that [Cuevas] did. He admits those things. Therefore, I admit those things to you. I didn't do that because I believed the prosecution could prove those things because as it turns out they couldn't. We admitted those things because he did them.

> By the way, the Judge told you, not once, but at least twice and will again, that what I say is not evidence. . . . Remember that it's your job to find the facts. So even if I stand up here all day — let's imagine I come up here and say, you know, [Cuevas] did everything he's charged with, every last little thing, it wouldn't make any difference. You would have to go back there, weigh the evidence, and decide for yourselves.

B. Standard of Review

¶ 21 We review an alleged violation of a constitutional right de novo. *People v. Janis*, 2018 CO 89, ¶ 14, 429 P.3d 1198, 1201.

C. Analysis

¶ 22 Cuevas contends that his defense counsel usurped his right to personal autonomy under *McCoy* by conceding guilt during counsel's opening statement. Because *McCoy* is inapplicable under the facts of this case, we reject Cuevas' contention.

¶ 23 In *McCoy*, a grand jury indicted the defendant on a charge of first degree murder. 584 U.S. at 418. Two weeks before trial, defense counsel told the defendant that he would concede guilt in the hope of avoiding the death penalty. *Id.* The defendant was "furious," told counsel "not to make that concession," and asked counsel to instead pursue an acquittal. *Id.* at 418-19 (citation omitted). In his opening statement at trial, defense counsel nevertheless told the jurors that "there was 'no way reasonably possible' that they could hear the prosecution's evidence and reach 'any other conclusion than [the defendant] was the cause of these individuals' death.'" *Id.* at 419 (citation omitted). The defendant protested and, "out of earshot of the jury, . . . told the court that [counsel] was 'selling [him] out' by maintaining that [he] 'murdered [his] family.'" *Id.* (third and fifth alterations in original) (citation omitted). The court told the defendant that it "would not permit 'any other outbursts,'" and counsel continued his opening statement by telling the jury that the evidence was "unambiguous" that the defendant had "committed three murders." *Id.* at 419-20 (citation omitted). The defendant testified in his own defense, "maintaining his innocence and pressing an alibi difficult to fathom." *Id.* at 420. Counsel again conceded guilt during closing argument, and the jury found the defendant guilty of first degree murder. *Id.*

¶ 24 The United States Supreme Court concluded that the defendant was entitled to a new trial. *Id.* at 428. In doing so, it recognized a criminal defendant's Sixth Amendment right to autonomy in deciding the objectives of the defendant's defense, and it held that this right prohibits defense counsel from admitting a client's guilt of a charged crime over the client's express objection to that admission. *Id.* at 423-24.

¶ 25 In reaching its decision, the Court distinguished *Florida v. Nixon*, 543 U.S. 175 (2004), a case involving an ineffective assistance of counsel claim in which the Court "considered whether the Constitution bars defense counsel from conceding a . . . defendant's guilt at trial 'when [the] defendant, informed by counsel, neither consents nor objects.'" *McCoy*, 584 U.S. at 417 (second alteration in original) (quoting *Nixon*, 543 U.S. at 178). In *Nixon*, the Court held that, "[w]hen counsel informs the defendant of the strategy counsel believes to be in the defendant's best interest and the defendant is unresponsive, counsel's strategic choice is not impeded by any blanket rule demanding the defendant's explicit consent." 543 U.S. at 192.

¶ 26 The distinguishing factor between *McCoy* and *Nixon* was that, whereas the defendant in *Nixon* "'never verbally approved or protested' counsel's proposed approach," *McCoy*, 584 U.S. at 424 (quoting *Nixon*, 543 U.S. at 181), the defendant in *McCoy* "vociferously insisted that he did not engage in the charged acts and adamantly objected to any admission of guilt," *id.* at 417.

¶ 27 The facts in this case fall somewhere between those in *Nixon* and those in *McCoy*. Whereas the defendant in *Nixon* remained silent when defense counsel consulted with him regarding a guilt concession strategy, Cuevas points out that "there is nothing in the record to indicate that Cuevas' counsel consulted with [him] to offer him an opportunity to agree or disagree with a trial approach that involved conceding his guilt." On the other hand, whereas the defendant in *McCoy* disputed any involvement in the charged criminal acts, told defense counsel before trial not to concede guilt, and protested counsel's opening statement concession, Cuevas did not. (Indeed, Cuevas expressly *admitted* during his police interview that he ran from the police and sold M.L.'s car to a scrapyard.) Still, Cuevas asserts that, "by pleading not guilty to all the charges and pressing forward to trial, [he] insisted on a defense of complete innocence."

¶ 28 The question we must answer, then, is whether Cuevas' not guilty plea alone is tantamount to an express assertion of innocence under *McCoy* such that defense counsel may not override it by conceding guilt. We conclude that it is not.

¶ 29 In reaching this conclusion, we find several cases decided since *McCoy* instructive. In *Harris v. State*, 856 S.E.2d 378 (Ga. Ct. App. 2021), for instance, defense counsel made an "on the fly" decision to concede the defendant's guilt on a lesser charge during closing argument. *Id.* at 381. Counsel did not consult with the defendant about this concession beforehand, and the defendant was convicted on all counts. *Id.* On appeal, the defendant argued "that his attorney's unilateral decision to concede guilt on the methamphetamine charge after [he] pleaded not guilty to the charges and 'offered exculpatory testimony' unlawfully usurped his Sixth Amendment autonomy to decide the goals of his defense." *Id.* at 383.

¶ 30 The Georgia Court of Appeals disagreed for two reasons:

> First, nothing in the [*McCoy*] Court's holding requires counsel to obtain the express consent of a defendant prior to conceding guilt. Indeed, the Court noted that its holding in *McCoy* is entirely consistent with [*Nixon*], in which the Court previously held that an attorney is not per se ineffective for adopting a strategy to concede guilt, even if his client does not expressly consent to that strategy. Thus,

> the absence of [the defendant's] affirmative consent to conceding guilt does not alone entitle him to a new trial under *McCoy*.
>
> Next, we cannot agree that a defendant's not guilty plea equates to an "intransigent and unambiguous objection" to conceding guilt. . . . Under these circumstances, we cannot say that trial counsel's concession of [the defendant's] guilt on the methamphetamine charge violated [his] "Sixth Amendment-secured autonomy" such that he is automatically entitled to a new trial.

Id. (citations omitted); *see also People v. Franks*, 248 Cal. Rptr. 3d 12, 18 (Ct. App. 2019) ("Although [the] defendant denied guilt during police interrogations and expressed a general desire to review discovery and help his lawyer 'fight' the prosecution's evidence, nothing in the record indicates that he ever made it clear to his counsel (or the court) that the objective of his defense was to maintain innocence, or that he voiced 'intransigent objection' — or any opposition — to his lawyer's defense strategy."); *People v. Lopez,* 242 Cal. Rptr. 3d 451, 459-60 (Ct. App. 2019) (*McCoy* is inapplicable where there was no evidence in the record that the defendant objected to his counsel's decision to concede guilt; "it was 'not the trial court's duty to inquire whether the defendant agrees with his counsel's decision to make a concession, at least where, as here, there is no explicit indication the defendant disagrees with his attorney's tactical approach to presenting the defense.'" (quoting *People v. Cain*, 892 P.2d 1224, 1241 (Cal. 1995))).

¶ 31 Guided by these cases, we reject Cuevas' assertion that his not guilty plea, without more, "remained his express will to maintain his innocence." Rather, the only result of Cuevas' not guilty plea was to require the prosecution to satisfy its burden to prove beyond a reasonable doubt that he committed the charged crimes. *See Wood v. United States*, 128 F.2d 265, 273 (D.C. Cir. 1942) ("The function of [a plea of not guilty] is to put the Government to its proof and to preserve the right to defend. It does not go to prove that the defendant is innocent."); *People v. Garcia*, 573 N.Y.S.2d 257, 259 (App. Div. 1991) ("There is certainly no question that a plea of not guilty, entered at arraignment, is not the equivalent of a factual assertion of innocence."); *see also People v. Allee*, 740 P.2d 1, 7 (Colo. 1987) ("A verdict of not guilty is not a verdict of innocence. It is simply a verdict of not proven in the particular case tried . . . ." (quoting *Roberts v. People*, 87 P.2d 251, 256 (Colo. 1938))).

¶ 32 To the extent Cuevas argues that counsel's failure to consult with him "deprived [him] of the opportunity to expressly object" under *McCoy*, we disagree. To be sure, defense counsel has a duty to consult with the client about trial strategies, including conceding guilt. *See, e.g.*, *McCoy*, 584 U.S. at 423 ("Counsel, in any case, must still develop a trial strategy and discuss it with her client, *see* [*Nixon*, 543 U.S. at 178], explaining why, in her view, conceding guilt would be the best option."); *Strickland v. Washington*, 466 U.S. 668, 688 (1984) (recognizing defense counsel's "overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution"); Colo. RPC 1.2(a) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued."). By violating that duty, however, defense counsel does not inherently usurp his or her client's autonomy under *McCoy*. Rather, such a violation implicates the defendant's right to effective assistance of counsel. *See, e.g.*, *Harvey v. State*, 318 So. 3d 1238, 1239-40 (Fla. 2021) (absent the defendant's express objection to counsel's concession, his claim that counsel conceded guilt without consulting him implicates his right to effective assistance of counsel under *Nixon* and *Strickland*, not his right to autonomy under *McCoy*); *Grant v. Comm'r of Corr.*, 287 A.3d 124, 133 n.8 (Conn. 2022) (the defendant's claim that "if counsel is not free to concede to a client's guilt for strategic purposes over a client's objection, counsel should similarly not be free to do so without inquiring with the client at all" should be analyzed under *Strickland* rather than *McCoy*); Colin Miller, *The Real* McCoy*: Defining the Defendant's Right to Autonomy in the Wake of* McCoy v. Louisiana, 53 Loy. U. Chi. L.J. 405, 425 (2022) ("In the wake of *McCoy*, seemingly all courts have found [*Nixon*] applies and the right to autonomy does *not* apply when an attorney fails to consult with his client before admitting his legal guilt.").

¶ 33 Thus, insofar as Cuevas claims that defense counsel did not consult with him regarding a guilt concession strategy, such a claim should be raised in a postconviction motion under Crim. P. 35(c), not on direct appeal. Doing so will allow the postconviction court to hold an evidentiary hearing to develop the facts necessary to determine whether defense counsel consulted with Cuevas before trial about a guilt concession strategy. *See People v. Kelling*, 151 P.3d 650, 655 (Colo. App. 2006) ("[B]ecause of the need for a developed factual record, an ineffective assistance of counsel claim should ordinarily be raised in a postconviction proceeding, not on direct appeal.").

¶ 34 In sum, because nothing in the record indicates that Cuevas expressly objected to counsel's concession, *see McCoy*, 584 U.S. at 426, his right to autonomy under *McCoy* was not violated. Accordingly, we discern no Sixth Amendment violation.

IV. Jury Instructions

¶ 35 Cuevas contends that the court erred by denying defense-tendered jury instructions. We disagree.

A. Standard of Review

¶ 36 District courts have a duty to instruct juries correctly on all matters of law. *Day v. Johnson*, 255 P.3d 1064, 1067 (Colo. 2011). We review de novo whether jury instructions, as a whole, accurately informed the jury of the law. *Id.* We review a district court's decision regarding a particular jury instruction for an abuse of discretion and will not disturb the court's decision unless it is manifestly arbitrary, unreasonable, or unfair. *Id.*

B. Analysis

¶ 37 Defense counsel tendered the following two jury instructions: (1) “Guilt by association is not an acceptable rationale and does not constitute proof”; and (2) “The guilt of a defendant cannot be established by mere presence at the scene of a crime, even with knowledge that a crime is being committed.” As for the guilt by association instruction, counsel argued that Cuevas “is inseparably associated with [Cuevas’ wife]. . . . [T]he fact he is associated with her doesn’t prove that he’s guilty. It doesn’t prove any of the elements of the offense.” As for the mere presence instruction, counsel similarly argued, “The fact that you are associated with someone and/or present does not raise a duty to prevent a crime.” The court denied both instructions because it found defense counsel’s supporting case law inapposite.

¶ 38 On appeal, Cuevas contends that the court abused its discretion by denying the guilt by association and mere presence instructions because they were “fundamental to Cuevas’ alternate[]suspect defense,” and the record contains evidence to support that defense. *See People v. Nunez*, 841 P.2d 261, 264 (Colo. 1992) (“[A]n instruction embodying a defendant’s theory of the case *must be given* by the trial court if the record contains any evidence to support the theory.”).

¶ 39 We reject Cuevas’ contention. Defense counsel never argued, nor do we perceive, that the tendered instructions related to his theory of the case — let alone were fundamental to his alternate suspect defense. In any event, the court acted within its discretion to deny the tendered instructions because the other jury instructions encompassed them. Where, as in this case, “proper instructions are given concerning the presumption of innocence, the prosecution’s burden of proof, reasonable doubt, the essential elements of the offenses, and the definition of the requisite *mens rea*, the so called ‘mere presence’ instruction is necessarily encompassed by the instructions as a whole.” *People v. Chavez*, 190 P.3d 760, 769 (Colo. App. 2007) (quoting *People v. Simien*, 671 P.2d 1021, 1024 (Colo. App. 1983)) (“[A] refusal to give a ‘mere presence’ instruction does not constitute reversible error, so long as the principle is adequately conveyed by other jury instructions.”); *People v. Trujillo*, 2018 COA 12, ¶ 18, 433 P.3d 78, 84 (The trial court did not abuse its discretion by denying defense-tendered jury instructions because the “instructions, as a whole, ‘fairly and adequately cover[ed] the issues presented.'" (quoting *People v. Pahl*, 169 P.3d 169, 183 (Colo. App. 2006))) (alteration in original).

¶ 40 Accordingly, we conclude that the court did not abuse its discretion by denying the defense-tendered jury instructions.

V. Recross-examination

¶ 41 Cuevas asserts that the court erred by denying defense counsel's request to recross-examine an expert witness. We disagree.

A. Standard of Review

¶ 42 A district court has broad discretion regarding the scope and limits of cross-examination, and we will not disturb the court's ruling absent a showing of an abuse of that discretion. *People v. Ewing*, 2017 COA 10, ¶ 29, 413 P.3d 188, 194.

B. Analysis

¶ 43 At trial, the People's expert in forensic pathology and toxicology testified about M.L.'s cause of death. He explained that "most of the [stab wounds] in the chest[] entered the chest cavities to cause significant injuries to the lungs and the pulmonary trunk."

¶ 44 On cross-examination, defense counsel asked clarifying questions about the degree to which the stab wounds penetrated M.L.'s chest and the force necessary to do so:

> Q: The wounds that you saw, the stab wounds could have been inflicted by a person without any exceptional strength. Right?
>
> A: Yes, that's correct.
>
> Q: Could be male or female?
>
> A: That's correct.
>
> Q: Not all of the chest stab wounds penetrated. Right?
>
> A: That's correct.
>
> Q: Some were on the sternum?
>
> A: Yes.
>
> Q: And the sternum is that big bone in the middle of the chest?
>
> A: Correct.

¶ 45 On redirect, the prosecutor followed up with the expert:

> Q: Did the stab wound on the chest penetrate any bone?
>
> A: Yes. They variably penetrated the sternum and the ribs.
>
> Q: Now, I'd like to clarify. Does that take a lot of force with, say, a knife to penetrate the sternum?

> A: It's hard to say, you know, to quantitate an amount of force. It certainly takes an intentional act in my opinion to cause different stab wounds on the chest. Whether or not that's a lot of force versus, you know, minimal force just based on the person or persons who performed the stabbing. Again, going through bone is going to, you know, require more force than, say, soft-tissue, skin, fat, that sort of thing.

¶ 46 Defense counsel requested to recross-examine the expert because "the prosecution left the impression that there was complete penetration of the sternum and ribs, in other words went through. That did not happen." The court denied counsel's request.

¶ 47 We reject Cuevas' contention that the court abused its discretion by doing so. Counsel had ample opportunity to cross-examine the expert, and no new matters were raised on redirect examination. *See People v. Baker*, 178 P.3d 1225, 1232 (Colo. App. 2007) ("[O]nce a party has had an opportunity to substantially exercise the right of cross-examination, courts have discretion to limit recross-examination when no new matters have been raised on redirect or additional testimony would be only marginally relevant.").

¶ 48 To the extent Cuevas argues that the expert's testimony on redirect confused the jury by suggesting that "there was complete penetration," we disagree. The expert testified that the stab wounds only "variably" penetrated M.L.'s sternum and ribs and that he could not determine the amount of force necessary to cause such variable penetration. Such testimony revealed the main point counsel sought to clarify for the jury — that the wounds did not require exceptional strength and therefore could have been inflicted by a male or a female. In any event, counsel had an opportunity during cross-examination to ask the exact clarifying question he sought to ask on recross.

VI. Cumulative Error

¶ 49 Because we have not found any errors, the cumulative error doctrine is not implicated in this case. *People v. Grant*, 2021 COA 53, ¶ 76, 492 P.3d 345, 356.

VII. Disposition

¶ 50 The judgment is affirmed.

JUDGE WELLING and JUDGE SCHOCK concur.